

# NEW CALIFORNIA "QI" LAW

## "PROVIDES CONSUMER PROTECTION FOR INVESTORS"



### Compliments of

On September 30, 2008, Governor Schwarzenegger signed into law SB 1007 (effective January 1, 2009) requiring qualified intermediary (QI) companies to comply with certain requirements if they hold exchange funds for customers who own relinquished or replacement property in California (California Exchange Customer). It also pertains to someone who maintains an office in California or advertises in California provided the relinquished property is in California.

The law provides that QI's must meet certain bonding and insurance requirements as summarized below. They must also notify their California Exchange Customers of any change in the control of the company. In addition, the law requires QI companies to act as a custodian for all exchange funds and to invest those funds in investments that meet the "prudent investor standard" as defined by California law. If a QI violates the provisions of this law they may be subject to civil suit. The injured customer may file a claim on the bonds, deposits, or letters of credit as provided in the law to recover damages. Some highlights of the law are shown below:

- **Investment Standards** - Defines that exchange funds must be invested using the "prudent investor standard" as defined in Article 2.4 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the California Probate Code.
- **Insurance and Bonding Requirements** - An exchange facilitator (QI) shall at all times comply with one or more of the following: (1) Maintain a fidelity bond or bonds in an amount not less than \$1 million or (2) deposit cash, securities or a letter of credit for not less than \$1 million or (3) use a qualified escrow or trust AND (1) maintain an Errors and Omissions Insurance Policy in an amount not less than \$250,000 or (2) deposit cash, securities or a letter of credit in an amount not less than \$250,000.
- **Change in Ownership** - A person who engages in business as a exchange facilitator shall notify all existing exchange clients who owns relinquished property in the state of California or purchase replacement property in the state of California of any change in control of the exchange facilitator (QI) within 10 days of the change in ownership.
- **Prohibited Acts** - The exchange facilitator (QI) must not engage in various "bad boy" accts such as material misrepresentations, false advertising, failure to account for money or property, failure to return funds to clients, fraud, criminal conduct, etc.
- The law *does not* provide for registration or licensing and shall be in effect from January 1, 2009 until January 1, 2014.



**ASSET PRESERVATION**  
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A National IRC §1031 "Qualified Intermediary"

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